

**REMARKS-General**

Applicant has rewritten line 36 of specification on p 5, under "Description of the Drawings" to indicate that fig. 3 is prior art.

Applicant has rewritten all claims to define the invention more particularly and distinctly so as to overcome the technical rejections and define the invention patentably over the prior art.

The Rejection of Claim 1 On Swan Is Overcome

Claim 1 was rejected under § 102 as being anticipated by Swan 5501333. Claim 1 has been rewritten as new claim 28 to define patentably over this reference. Applicant requests reconsideration of this rejection as now applicable to Claim 28 for the following reasons:

- (1) Claim 28 has been amended to show novel physical differences of the applicant's collapsible shipping container over Swan's collapsible container.
- (2) These novel physical features of Claim 28 produce new and unexpected results and hence are unobvious and patentable over Swan.
- (3) Swan lacks any suggestion that his collapsible container should be modified in a manner to meet the claims of the applicant's invention.
- (4) If the applicant's collapsible shipping container were, in fact, obvious, those skilled in the art surely would have implemented it by now. That is—the fact that those skilled in the art have not implemented the invention, despite its great advantages, indicates that it is not obvious.

The References And Differences Of The Present Invention Thereover

Prior to discussing the claims and the above four points, applicants will first discuss the reference and the general novelty of the present invention and its unobviousness over the references.

Swan describes a collapsible container with a base, side wall, and cap. The side wall of the collapsible container fits around the two sides, front, and rear surfaces of the container. The cap is the upper surface of the container. When the side wall is removed and collapsed it can be stored inside of the base. The cap can be secured over it, so that all of the parts of the collapsible container are in a substantially compacted position. These three parts are described as functioning in conjunction with each other by engaging each other in their collapsed and setup positions. Their structure is defined by their manner of engagement to each other. The functioning of Swan's collapsible container is limited to collapsing in the particular manner defined by its structure.

With regard to a collapsible shipping container relying on a cover that becomes the front, upper, and rear surfaces of the container, applicants perform this for the first time. Until now, no one ever thought of a collapsible shipping container with a cover forming multiple surfaces. Applicant's multiple surface cover allows for single-surface side panels. These single-surface side panels can be folded against the base frame with two folds, folding the side panels on their horizontal hinges and then on their vertical hinges. Applicants multiple surface cover, being constructed of flexible material can be collapsed for easy storage when not in use. By compressing the cover and folding up the side panels, the structure of the collapsible shipping container can be collapsed in a unique way that offers unique and advantageous functional opportunities in how it is stored and shipped. One of these opportunities is the ability to engage to and utilize a bicycle trailer as a base frame. As stated, this procedure was not done before, so neither it nor its concomitant advantages were known or appreciated.

Claim 28 has been amended to show the applicant's collapsible shipping container in a manner that shows physical novelty over Swan's collapsible container.

There are four fundamental physical differences between the applicant's collapsible shipping container and Swan's collapsible container.

(A) Surfaces Covered by Swan's Cap vs. Surfaces Covered by the Applicant's Cover:

The cap as described by Swan is described as a "generally planar upper surface 100". The cover of the applicant's collapsible shipping container is described as a "flexible cover.... whereby said flexible cover is the front, upper, and rear surfaces of the container when it is secured to said first and second side panels". This is a very important structural difference between Swan and the applicant's collapsible shipping container. While Swan's collapsible container is dependent on the side wall for the structure of the front and rear surfaces, the cover of the applicant's collapsible shipping container contains the structure of the front and rear surfaces.

(B) Specific Disclosure of Flexibility of Applicant's Cover:

Swan does not specify rigidity or flexibility in the cap of his collapsible shipping container. The cover of the applicant's invention is described specifically as a flexible cover. This specific recitation of flexibility is an important feature of the cover as it lends itself to a structural functioning of the applicant's collapsible shipping container which is specifically different from the structural functioning of Swan's collapsible container. The flexible cover functions so as to extend and be positioned over the front, upper and rear surfaces of the applicant's collapsible shipping container.

(C) Swan's Means of Engaging the Cap to the Sidewall vs. Applicant's Means of Engaging the Cover to the Side Panels:

Swan's cap is described as including a "depending apron, said apron including means for selectively engaging said side wall or said base". This depending apron is best understood as a connection between the perimeter of the cap and the upper edge of the sidewall or base.

The cover of the applicant's collapsible shipping container is described as including a "plurality of crossbars, said crossbars including means for selectively engaging said first and second side panels when they are in their unfolded use position" The crossbars function as a connection between the perimeter of the cover and the front, upper, and rear perimeter of the side panels. The crossbars also function as the structural support for the front, upper and rear surfaces of the collapsible shipping case.

This structural support function of the crossbars is necessary because the cover is flexible. The crossbars and flexible cover function together resulting in a cover that becomes the front, upper and rear surfaces of the collapsible shipping container when installed and that can be compacted for storage when removed from the side panels.

(D) Swan's Sidewalls vs. Applicant's Side Panels:

Swan's cap as described functions with his side walls as described. When Swan's side walls are removed from the base, they can be stored within it, and the cap can be closed over them, containing everything compactly together.

The applicant's cover as described functions with the applicant's side panels as described. When the applicant's cover is removed, it can be compacted down for storage because it is flexible. The side panels can be folded up against the base-frame. Because the applicant's side panels consist of only one surface each and not the front and rear surfaces of the container as do Swan's side walls, it requires only two folds on the vertical and horizontal hinges to fold them into a compact position against the base frame. The applicant's sidewalls can be folded down to a storage/non-use position without disengaging them from the base frame. Swan's side walls require that they be disengaged from the base and then folded and stored.

Because the applicant's side panels are simple, they function to fit compactly on the base frame. Attachment of the side panels to the base frame requires the engagement of one surface of the side panel to one surface of the base frame. Swan's side walls are engaged to the perimeter of the base along its sides, front, and rear.

It should be noted that Swan's cap and sidewalls as described function with each other, but neither part would function properly in combination with the applicant's cover or side panels, i.e. combining Swan's cap with the applicant's side panels or Swan's side wall with the applicant's cover.

These novel physical features of Claim 28 produce new and unexpected results and hence are unobvious and patentable over Swan.

Also applicant submits that the novel physical features of claim 28 are also unobvious and hence patentable under § 103 since they produce new and unexpected results over Swan.

These new and unexpected results are the ability of the applicant's collapsible shipping container to collapse by removing and compacting the cover and folding the side panels without having to disengage them from the base frame. This in turn results in a higher speed set up and disassembly of the collapsible shipping container. This also results in a collapsible shipping container that can be collapsed to a smaller more convenient size for transporting, shipping, and engagement to multiuse frame bases. One of these multiuse frame bases is a bicycle trailer. Applicant's collapsible shipping container, therefore, is vastly superior to that of Swan. The novel features of applicants' system which effect these differences are, as stated, clearly recited in claim 28

Swan lacks any suggestion that his collapsible container should be modified in a manner to meet the claims of the applicant's invention.

Also applicant submits that the novel physical features of claim 28 were in no way anticipated by or suggested by Swan and is hence patentable.

The structure of Swan's collapsible container allows it to be collapsed so that it can be easily shipped elsewhere and then reassembled for repeated use. The structure of the applicant's collapsible shipping container also allows it to collapse so that it can be easily shipped elsewhere and reassembled for repeated use. However, the structure of the applicant's collapsible shipping container also allows it to mount to multiuse base frames such as bicycle trailers. Swan has no suggestions for making special alterations to the structure of the collapsible container so as to allow it to make use of multiuse base frames such as bicycle trailers, thereby expanding the functionality of both the multiuse base frame and the collapsible container. Swan also has no suggestions for altering the structure of the cap or sidewall significantly so as to make the cap take on the front and rear surface structure of the side wall, thereby making it easier to assemble and disassemble as shown in the applicant's collapsible shipping container. Applicant's collapsible shipping container is therefore unsuggested by Swan and hence is patentable.

If the applicant's collapsible shipping container were in fact obvious, those skilled in the art surely would have implemented it by now.

Also applicant submits that if the applicant's collapsible shipping container were in fact obvious, those skilled in the art surely would have implemented it by now. That is—the fact that those skilled in the art have not implemented the invention, despite its great advantages, indicates that it is not obvious.

The applicant's collapsible shipping container has many advantages. The two main advantages discussed previously being #1 its easy-to-use simple functioning for faster assembly and disassembly and #2 its ability to engage to multiuse base frames such as bicycle trailers. Obviously an easier to use collapsible shipping container is desired. A collapsible shipping container that can be used with multiuse base frames such as bicycle trailers has far reaching advantages. A bicyclist utilizing the collapsible shipping container with a bicycle trailer will be able to transport his collapsible shipping container with him to

travel centers. Once at a travel center, the bicyclist will be able to ship his bicycle and trailer in the collapsible shipping container. These are great advantages to a bicyclist who is traveling. The fact that those skilled in the art have not implemented these advantages into shipping container or bicycle trailer, indicate that the applicant's collapsible shipping container is not obvious.

The Dependent Claims Are A Fortiori Patentable Over Swan

New dependent claims 29 to 36 incorporate all the subject matter of claim 28 and add additional subject matter which makes them a fortiori and independently patentable over these references. All of these dependent claims are patentable for the same reasons given with respect to the parent claim. In fact they are even more patentable because they add additional limitations.

The Rejection of Claim 19 On Swan In View of McCarthy Is Overcome

The last O.A. rejects independent claim 19 on Swan in View of McCarthy. Claim 19 has been rewritten as new claim 37 to define patentably over these references and any combination thereof. Applicant requests reconsideration of this rejection as now applicable to Claim 37 for the following reasons:

- (1) There is no justification, in Swan and McCarthy or in any prior art separate from the applicant's disclosure, which suggests that these references be combined, much less be combined in the manner proposed.
- (2) The proposed combination would not be physically operative.
- (3) Even if Swan and McCarthy were to be combined in the manner proposed, the proposed combination would not show all of the novel physical features of claim 37.
- (4) These novel physical features of claim 37 produce new and unexpected results and hence are unobvious and patentable over these references. The combination is greater than the sum of the parts.
- (5) The applicant's collapsible shipping container solves a long-felt, but unsolved need.

The References and Differences Of The Present Invention Thereover

Prior to discussing the claims and the above four points, applicants will first discuss the references and the general novelty of the present invention and its unobviousness over the references.

Swan describes a collapsible container with a base, side wall, and cap. The side wall of the collapsible container fits around the two sides, front, and rear surfaces of the container. The cap is the upper surface of the container. When the side wall is removed and collapsed, it can be stored inside of the base, and the cap can be secured over it so that all of the parts of the collapsible container are in a substantially compacted position. These three parts are described as functioning in conjunction with each other by engaging each other in their collapsed and setup positions. Their structure is defined by their manner of engagement to each other. The functioning of Swan's collapsible container is limited to collapsing in the particular manner defined by its structure. The entire focus of Swan's collapsible container is for a container that can be set up from shipping and then compacted down to a smaller size for return shipping after the shipped items have been returned. There is no mention in Swan of a bicycle trailer. There is also no mention of any type of alternate uses of the base.

McCarthy describes a bicycle trailer that includes a trailer assembly and a hitch assembly. McCarthy's bicycle trailer contains the structural properties present in most bicycle trailers, these being a central base frame or compartment, wheels attached to the compartment and an apparatus for attaching the bicycle trailer to the bicycle. The entire focus of McCarthy is to describe a particular structure for a bicycle trailer. There is no mention in McCarthy of a collapsible container. There is one mention of an alternate use for the bicycle trailer, specifying an arrangement that would allow it to be utilized as a utility cart, but this is unrelated to any type of shipping container. There is no mention of any other alternate uses for the bicycle trailer.

With regard to a collapsible shipping container using a bicycle trailer as the base frame, applicant performs this for the first time. Until now, no one ever thought of a collapsible shipping container that utilized a bicycle trailer as its base frame and could be used as either a bicycle trailer or a shipping container. Applicant's invention utilizes the structure of the collapsible shipping container and the bicycle trailer by combining the useful aspects of the two devices. In order to accomplish this combination, the components of the collapsible shipping container have been specifically modified so as to function correctly in this combination. As stated this procedure was not done before, so neither it nor its concomitant advantages were known or appreciated.

Swan and McCarthy Do Not Contain Any Justification To Support Their Combination, Much Less In The Manner Proposed.

With regard to the proposed combination of Swan and McCarthy, it is well known that in order for any prior-art references to be validly combined for use in a prior-art § 103 rejection, the references themselves (or some other prior art) must suggest that they be combined. E.g., as was stated in In re Sernaker, 217 USPA 1,6(CAFC 1983):

“[P]rior art references in combination do not make an invention obvious unless something in the prior art references would suggest the advantage to be derived from combining their teachings.”

That the suggestion to combine the references should not come from the applicant was forcefully stated in Orthopedic Equipment Co. v. United Stated, 217 USPQ 193, 199 (CAFC 1983):

It is wrong to use the patent in suit [here the patent application] as a guide through the maze of prior art references, combining the right references in the right way to achieve the result of the claims in suit [here the claims pending]. Monday morning

quarterbacking is quite improper when resolving the question of nonobviousness in a court of law [here the PTO].”

As was further stated in Uniroyal, Inc. v. Rudkin-Wiley Corp., 5 USPQ 2d1434 (CAFC 1988), “[w]here prior-art references require selective combination by the court to render obvious a subsequent invention, there must be some reason for the combination other than the hindsight gleaned from the invention itself...Something in the prior art must suggest the desirability and thus the obviousness of making the combination.” [Emphasis supplied.]

In line with these decisions, recently the Board stated in Ex parte Levengood, 28 USPQ2d 1300 (PTOBA&I 1993):

“In order to establish a prima facie case of obviousness, it is necessary for the examiner to present evidence, preferably in the form of some teaching, suggestion, incentive or inference in the applied prior art or in the form of generally available knowledge, that one having ordinary skill in the art would have been led to combine the relevant teaching of the applied references in the proposed manner to arrive at the claimed invention....That which is within the capabilities of one skilled in the art is not synonymous with obviousness.... That one can reconstruct and/or explain the theoretical mechanism of an invention by means of logic and sound scientific reasoning does not afford the basis for an obviousness conclusion unless that logic and reasoning also supplies sufficient impetus to have led one of ordinary skill in the art to combine the teachings of the references to make the claimed invention.... Our reviewing courts have often advised the Patent and Trademark Office that it can satisfy the burden of establishing a prima facie case of obviousness only by showing some objective teaching in either the prior art or knowledge generally available to one of ordinary skill in the art, that ‘would lead’ that individual ‘to combine the relevant teachings of the references.’....Accordingly, an examiner cannot establish obviousness by locating references which describe various aspects of a patent

applicant's invention without also providing evidence of the motivating force which would impel one skilled in the art to do what the patent applicant has done."

In the present case, there is no reason given in the last O.A. to support the proposed combination.

The O.A. noted (p. 6) the following on the combination of Swan and McCarthy

"It would have been obvious to one with ordinary skill in the art at the time the invention was made to include a trailer, as shown in McCarthy, so that the container may be easily transported by a bicycle, prior to/after the bicycle is shipped in the container, as best understood. This dual-purpose configuration is efficient and low-cost.

The applicant submits that the fact that the combination of bicycle trailer and collapsible shipping container produces advantages mitigates in favor of the applicant because it proves that combination produces new and unexpected results and hence is unobvious.

As stated in the above Levengood case,

"That one can reconstruct and/or explain the theoretical mechanism of an invention by means of logic and sound scientific reasoning does not afford the basis for an obviousness conclusion unless that logic and reasoning also supplies sufficient impetus to have led one of ordinary skill in the art to combine the teachings of the references to make the claimed invention."

The applicant therefore submits that combining Swan and McCarthy is not legally justified and is therefore improper. Thus the applicant submits that the rejection of these references is also improper and should be withdrawn.

Applicants respectfully request, if the claims are again rejected upon any combination of references, that the Examiner include an explanation, in accordance with MPEP § 706.02, Ex parte Clapp, 27 USP). 972 (P.O.B.A.1985), and Ex parte Levengood, supra, a “factual basis to support his conclusion that would have been obvious” to make the combination.

The Proposed Combination Would Not Be Physically Operative.

The functioning of Swan’s collapsible container is limited to collapsing in the particular manner defined by its structure. The entire focus of Swan’s collapsible container is for a container that can be set up for shipping and then compacted down to a smaller size for return shipping after the shipped items have been returned.

Combining a collapsible container of the physical structure and nature of Swan’s with a bicycle trailer as defined by Swan or any other description would not be physically operative. Swan’s collapsible shipping case relies on a base that engages to the side walls. If a bicycle trailer were the base it would not contain these engagement features and would have to be substantially modified in order to do so. The side walls of Swan’s shipping container must be removed and stored in between the cap and the base. This would be very physically burdensome to carry on a bicycle trailer to the point of being physically inoperative. The applicant’s collapsible shipping container utilizes side panels that engage the sides of the bicycle trailer and collapse onto the sides of the bicycle trailer. The cover is removed and stored.

The applicant therefore submits that it is necessary to make substantial modification to the references in order to combine them in the manner suggested. These substantial modifications to the references are not taught in the prior art; therefore the applicant’s invention is patentable over the references.

Even If Swan And McCarthy Were To Be Combined In The Manner Proposed, The Proposed Combination Would Not Show All Of The Novel Physical Features Of Claim 37.

However, even if the combination of Swan and McCarthy were legally justified, claim 37 would still have novel (and unobvious) physical features over the proposed combination. In other words, applicant's invention, as defined by claim 37, comprises more than only replacing the base of the collapsible shipping container with a bicycle trailer.

Specifically, a clause (e) clearly distinguishes the function and capability from Swan or McCarthy or any combination thereof since this clause recites:

“(e) a rear bracket with means for attaching to said bicycle trailer and with means for mounting a bicycle frame into a fixed position to said bicycle trailer, whereby the bicycle can be disassembled and packed inside of the collapsible shipping container, and the bicycle can be reassembled, and the collapsible shipping container can be connected to the rear end of the bicycle and used for carrying travel gear.”

Neither Swan nor McCarthy show the feature of brackets for mounting a bicycle trailer on top of the base or in the example of the applicant's invention the base as a bicycle trailer.

Clause (b) and (c) also clearly distinguish over Swan since he recites:

“(b) a first side panel comprised of a plurality of sub-panels hingedly joined so said first panel may be folded to a collapsed position or unfolded to a use position and with means to be secured extending substantially the length and height of the first side of the bicycle trailer;
(c) a second side panel comprised of a plurality of sub-panels hingedly joined so said second panel may be folded to a collapsed position or unfolded to a use position and

with means to be secured extending substantially the length and height of the second side of the bicycle trailer;”

Swan does not specify that his side walls be folded or unfolded against the base or more specifically the bicycle trailer. Swan rather shows side walls that engage the base and the cap and are disengaged and stored between the base and cap in the container’s collapsed state.

Thus the applicant submits that the invention is much more than merely substituting the bicycle trailer for the base of the collapsible shipping container and that claim 37 recites novel physical subject matter which distinguishes over any possible combination of Swan and McCarthy.

These Novel Physical Features Of Claim 37 Produce New And Unexpected Results Including That The Combination Is Greater Than The Sum Of The Parts And Hence Are Unobvious And Patentable Over These References.

Also applicant submits that the novel physical features of claim 37 are also unobvious and hence patentable under § 103 since they produce new and unexpected results over Swan and McCarthy or any combination thereof.

These new and unexpected results are the ability of the applicant’s collapsible shipping container to transform from use as a shipping container into a bicycle case. This in turn results in vastly increased efficiency for the traveling bicyclist because he can transport his shipping case together with his travel gear on board his bicycle trailer to a travel center. The bicyclist is then capable of utilizing the bicycle trailer as a shipping container for transporting the bicycle on board planes, trains, buses, boats and the like.

Additional unexpected results of the invention should be considered as synergistic effects of the combination. It should be considered that the whole (that is—the results achieved by the invention) is greater than the sum of its parts (that is the respective result of the individual

references). The individual result of a collapsible shipping container is the ability to collapse the container after use to a size that is more cost effective to ship. The individual result of the bicycle trailer is to have a devise with which to transport items while riding a bicycle. The results of combining a bicycle trailer with a collapsible shipping container allow the use of the bicycle trailer and collapsible shipping container in tandem. An important benefit of the synergy in the combination of a bicycle trailer with a collapsible shipping container is that the bicycle and bicycle trailer can be stored together in one easy-to-handle container. Previously, a bicyclist would require two separated shipping containers, one for the bicycle and a separate one for the bicycle trailer. Another important benefit of the synergy of bicycle trailer and collapsible shipping container is it requires fewer overall parts to produce these cooperatively operating parts than it does to produce a collapsible shipping container with its own base and separately a bicycle trailer. This is more cost effective to produce and also results in less equipment for the traveling bicyclist to transport and store.

Applicant's collapsible shipping container, therefore, is vastly superior to that of Swan or Swan in combination with McCarthy. The novel features of applicants' system which affect these differences are, as stated, clearly recited in claim 37.

The applicant's collapsible shipping container solves a long-felt, but unsolved need. Traveling bicyclists have long been hampered by the difficulty of traveling with a bicycle. Getting to or from a travel center with a bicycle, a bicycle shipping container, and traveling gear is a difficult task that could previously not be accomplished while riding a bicycle. The applicant's collapsible shipping container solves a long-felt, but unsolved need for the traveling cyclist by providing a collapsible shipping container and bicycle trailer combined in the same devise. Therefore the traveling bicyclist is able to ride his bicycle to and from travel centers completely self contained with everything he needs for transporting this bicycling equipment and traveling. Bicyclists will greatly benefit from the invention, and their long felt need for a better way to travel is solved. In effect, the overall range and usefulness of a

bicycle is expanded into a new area of convenient travel in conjunction with mass transit systems.

The Dependent Claims Are A Fortiori Patentable Over Swan

New dependent claims 38 to 42 incorporate all the subject matter of claim 37 and add additional subject matter which makes them a fortiori and independently patentable over these references. All of these dependent claims are patentable for the same reasons given with respect to the parent claim. In fact, they are even more patentable because they add additional limitations.

The Rejection of Claim 12 Is Overcome

The last O.A. rejects independent claim 12 under 35 U.S.C. 112. Claim 12 has been rewritten as new claim 43 to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Applicant requests reconsideration of this rejection as now applicable to Claim 43.

New claim 43 is identical to new claim 37 except that it distinguishes the collapsible shipping container as attachable to the bicycle trailer rather than stating the collapsible shipping container in combination with the bicycle trailer.

The purpose of new claim 43 is to describe the applicant's invention in an embodiment where it is not part of the bicycle trailer but rather attachable to a bicycle trailer. Other than this particular distinction, it shares identical features with new claim 37. New claim 43 is patentable over the prior references for the same reasons as stated for new claim 37 in the remarks above.

Dependent Claim 11 Has Been Rewritten as Independent Claim 50

The last O.A. states that Claim 11 "would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims." Independent

claim 1 has been rewritten with the language of dependent claim 11 inserted into it, as new claim 50 so as to be allowable.

Claim 27 Has Been Rewritten as Claim 49

Claim 27 is allowable but has been rewritten identically and inserted into the amendments to the claims as claim 49.

Conclusion

For all of the above reasons, applicants submit that the specification and claims are now in proper form, and that the claims all define patentably over the prior art. Therefore, they submit that this application is now in condition for allowance, which action they respectfully solicit.

Conditional Request for Constructive Assistance

The applicant has amended the specification and claims of this application so that they are proper, definite, and define novel structure which is also unobvious. If, for any reason, this application is not believed to be in full condition for allowance, applicants respectfully request the constructive assistance and suggestion of the Examiner pursuant to MPEP§ 2173.02

Additional Information Concerning the Invention

The applicant also requests that the patent examiner review the website of the applicant. The website address is www.wandertec.com. This website contains extended details concerning the collapsible shipping container of the application. The product has been updated and improved since the submission of this application 1 year and 9 months ago. The website shows how the invention has continued to improve upon its desired functions. The website explains precisely how the invention is used in the owner's manual section. The website discusses the many uses of the product in greater detail. The website also discusses many of the advantages of the invention in greater detail. The website also demonstrates the



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commerciality of the invention as it is for sale through the website and sales have begun. The website also contains a video demonstration which is very useful in understanding the functioning of the invention.

Very Respectfully,

 4/09/05
Joshua Matthew Lipton

Applicant Pros Se-----

2370 W. Rock Island Ave.

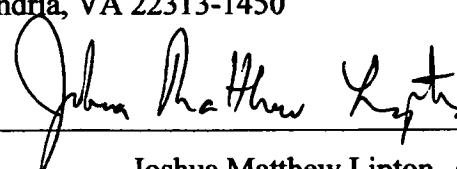
Flagstaff, AZ 86001

Tel. (928) 226-0294

Email: josh@wandertec.com

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Joshua Matthew Lipton, Applicant